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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 UNITED STATES OF AMERICA,)

9 Plaintiff,)

10 vs.)

11 JERALD LAVELLE JOHNSON,)

12 Defendant.)
13

2:00-CR-0394-RLH-PAL

ORDER

(Motion to Correct Clerical Error#161)

(Motion for Execution of Judgment—#166)

14 Before the Court is Defendant Johnson's **Motion to Correct Clerical Error**
15 **Pursuant to Federal Rule of Criminal Procedure Rule 36** (#161), to which the Government filed
16 its Response (#165). Also before the Court is Defendant Johnson's **Motion for Execution of**
17 **Judgment** (#166), to which the Government filed its Response (#167).

18 Neither motion has merit, but the Court will address the latter first.

19 Defendant's Motion for Execution of Judgment, aside for being a misnomer (there is
20 no judgment to execute), was based upon the mistaken assertion that the Government had not filed a
21 response to the first motion by the June 9, 2008, deadline. In fact, the Government filed its response
22 on May 29, 2008, well before the deadline. The Motion for Execution of Judgment will, accord-
23 ingly, be denied.

24 The Motion to Correct Clerical Error Pursuant to Federal Rule of Criminal Procedure
25 Rule 36 will also be denied, for two reasons:

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1 **1. NO ERROR IN THE JUDGMENT OF SENTENCE**

2 Defendant's motion assumes that the Court intended something that it did not, and
3 had just not made itself clear. The Court, both at the time of its 235-month sentence, and again, at
4 the 120-month sentence, ordered that the sentence was to run concurrently with the **undischarged**
5 term of the state imprisonment. The intent of the Court, as was correctly interpreted by the Bureau
6 of Prisons, was that this Court's sentence was to run concurrently with whatever remained of the
7 state sentence beginning from August 23, 2002, the date of this Court's original sentence. There
8 was never any intent by this Court to give the Defendant credit for the 22 months, or whatever time
9 he had served on the state sentence before this Court's sentence was imposed. The Bureau of
10 Prisons got it right. The Defendant got it wrong. There is no need for a correction. There is no
11 ambiguity. The motion will be denied on that ground.

12 **2. THE MOTION IS AN UNAUTHORIZED § 2255 MOTION**

13 Defendant Johnson characterizes this motion as being brought pursuant to Fed. R.
14 Crim P. 36, which provides for correction of clerical errors. Yet, his motion clearly states that the
15 Order of Commitment correctly reflects the judgment of the Court, it is only the difference in
16 interpretation between Johnson and the Bureau of Prisons which is the issue, *i.e.*, that the Order is
17 ambiguous, possibly not reflecting the intent of the Court. What Defendant seeks is a modification
18 to reflect what he hopes the Court intended.

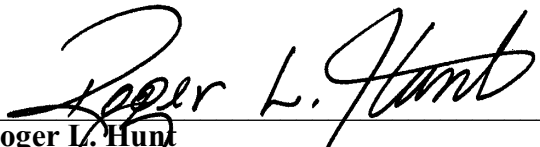
19 Because Defendant is not asking for relief under 28 U.S.C. § 2241, but is requesting
20 relief from the sentencing judge, and is asking this Court to clarify (correct) the sentence to conform
21 to his liking, this is more properly a motion under Section 2255. However, that section forbids a
22 second and successive motion without leave of the Circuit Court of Appeals, which has neither been
23 requested nor granted. This Court denied a previous § 2255 motion on October 15, 2005.
24 Accordingly, this is an unauthorized § 2255 motion, that was brought untimely.

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1 IT IS THEREFORE ORDERED that Defendant's **Motion to Correct Clerical**
2 **Error Pursuant to Federal Rule of Criminal Procedure Rule 36** (#161) and **Motion for**
3 **Execution of Judgment** (#166) are both DENIED.

4 Dated: July 7, 2008.

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7 **Roger L. Hunt**
8 **Chief United States District Judge**
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